

John B. Payne

jpayne@law-business.com

GARRISON LAWHOUSE, P.C.

www.law-business.com

800.220.7200

FAX 313.583.3100

1800 Grindley Park Street, Suite 6

Dearborn, Michigan 48124

September 23, 2014

Members of the Senate Judiciary Committee
State Capitol
Lansing, MI 48909

Re: Uniform Adult Guardianship and Protective Proceedings Jurisdiction
Act

Dear Committee Members:

I am an attorney with 31 years of legal experience and the author of West's Michigan Probate Manual. I am writing urge enactment of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). My experience and a recent Alabama Supreme Court case inform my opinion.

Sears v. Hampton, 143 So. 3d 151 (Ala. 2013)(attached as an exhibit), may be the first case reported under the UAGPPJA, a uniform act intended to address the problem of "granny snatching," and other irregularities in the way states handle guardianships and conservatorships of persons who have moved or been moved from other states. The act would govern when a state has jurisdiction to appoint a guardian or conservator, called a fiduciary, for someone who recently arrived in the state.

To illustrate the problem, one of my clients came to Michigan from Maine to have an operation. While she was still heavily medicated, her son had her evaluated as incompetent and filed a petition to be appointed her guardian. When she was off the medication, she could not go home to

Members of the Senate Judiciary Committee

September 23, 2014

Page 2

Maine because her son was her guardian and would not let her. She had to file a petition with the Michigan court to terminate the guardianship. One aspect of the UAGPPJA is to bar courts from appointing guardians or conservators for persons who are in the state only temporarily, or who already have fiduciaries in other states.

"Granny snatching" occurs when a family member moves an elder out of state to keep the person away from other family members. This can be due to a family conflict, or to exploit the person financially. The UAGPPJA provides guidance as to whether the court in the state where the elder has been relocated should appoint the person who brought the elder to the state as guardian or conservator.

In the Alabama case, Sears (an individual, not the retailer, which may or may not include fiduciary services as part of its bundle of product offerings, along with vision testing, cosmetology and driving instruction) was appointed as guardian and conservator for her mother, Day, in Kentucky. Sears and Day moved to Alabama and requested transfer of the guardianship and conservatorship to Alabama.

The Alabama court appointed an obnoxious and greedy individual as "guardian ad litem," a person appointed by the court to investigate the situation. The guardian ad litem objected to some expenditures in Kentucky and submitted an outrageous bill for \$4,110.00. She also recommended that Sears be replaced with the "county guardian and conservator" as guardian and conservator. The court followed this recommendation. The new fiduciary removed Day from Sears' home and put her in an "apartment home."

Members of the Senate Judiciary Committee
September 23, 2014
Page 3

On appeal the Alabama Supreme Court reversed this decision. It held that under the UAGPPJA, the probate court lacked jurisdiction to appoint different fiduciaries until after the case was accepted and a final order appointing the fiduciaries from the originating state was entered.

This appears to be a situation where the UAGPPJA was highly beneficial. A court's tendency to appoint "professionals" as guardians and conservators can cause great harm. This may be problematic in transferred cases, since the guardians and conservators who are transferring in might not have the same local connections as "homegrown" ones.

Fiduciary appointments can be very lucrative. The judge and his or her cadre of preferred appointees would all be motivated to replace a family member with a professional fiduciary. In curbing the replacement of family members who were appointed in the transferring state, the UAGPPJA shows its usefulness.

Please give the UAGPPJA careful consideration. It is very important in curbing unnecessary guardian and conservator appointments. Apart from incarceration, making an individual a ward of the state is the most drastic deprivation of rights the state can inflict. The UAGPPJA could help avoid improper appointments and bring consistency among the states.

Yours truly,



* The above graphic representation is a legal signature as defined by the Uniform Electronic Transactions Act, 2000 PA 305, MCLA 450.831 to 450.849.

Members of the Senate Judiciary Committee

September 23, 2014

Page 4

John B. Payne